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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/774,248	01/30/2001	James R. Gross	1313/1G952US2	9852

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EXAMINER

KIDWELL, MICHELE M

ART UNIT	PAPER NUMBER
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3761

DATE MAILED: 04/23/2004

*9*

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/774,248

Applicant(s)

GROSS ET AL.

Examiner

Michele Kidwell

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 27 January 2004.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-42 is/are pending in the application.
- 4a) Of the above claim(s) 14-28, 31-34 and 37-42 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-13, 29, 30, 35 and 36 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☒ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_ 6) ☐ Other: \_\_\_\_\_

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## **DETAILED ACTION**

### ***Election/Restrictions***

Applicant's election with traverse of Group 1 (claims 1 – 13, 29 – 30 and 35 – 36) in Paper No. 8 is acknowledged. The traversal is on the ground(s) that the search and examination of all claim groups can be made jointly without increasing the burden on the examiner. This is not found persuasive because the product as claimed could be made without compressing the layer to a specific density, which is required by independent claims 14, 27, 31 and 37. Additionally, even if compression were required, it could be produced without taking place between a forming or transfer fabric and a compaction roll as required by independent claim 37. Furthermore, the product may be made in a different layer configuration. For example, claim 1 requires the wicking layer to be disposed beneath the storage layer, however, claim 14 only requires a wicking layer with no positioning requirement.

The inventions are distinct for the reasons given above and have acquired a separate status in the art and a different classification.

The requirement is still deemed proper and is therefore made FINAL.

Claims 14 – 28, 31 – 32 and 37 – 42 are withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected invention, there being no allowable generic or linking claim. Applicant timely traversed the restriction (election) requirement in Paper No. 8.

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The examiner notes that claims 33 – 34 were inadvertently left out of the original restriction requirement, but have been included in Group II because the claims are dependent upon claim 31, also included in Group II, and the claims are directed to the same method of producing an absorbent core.

### ***Information Disclosure Statement***

The information disclosure statements filed 5/21/01 and 7/12/01 fail to comply with 37 CFR 1.98(a)(1), which requires a list of all patents, publications, or other information submitted for consideration by the Office. The information referred to therein has not been considered.

The information disclosure statements filed 5/21/01 and 7/12/01 fail to comply with 37 CFR 1.98(a)(2), which requires a legible copy of each U.S. and foreign patent; each publication or that portion which caused it to be listed; and all other information or that portion which caused it to be listed. It has been placed in the application file, but the information referred to therein has not been considered.

### ***Oath/Declaration***

The declaration filed 4/17/01 claims priority to 09/495,530 (a non-provisional application) that has since been converted to 60/367,349 (a provisional application). A supplemental oath or declaration is required to reflect the priority claim to a provisional application instead of a non-provisional application. The new oath or declaration must properly identify the application of which it is to form a part, preferably by application

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number and filing date in the body of the oath or declaration. See MPEP §§ 602.01 and 602.02.

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1 – 6, 10 – 13, 29 – 30 and 35 – 36 are rejected under 35 U.S.C. 102(b) as being anticipated by Hammons et al. (US 5,647,863).

With reference to claim 1, Hammons et al. (hereinafter "Hammons") discloses an absorbent core (abstract) comprising an acquisition layer (38), a storage layer (44) having absorbent capacity (col. 9, lines 10 – 18), disposed beneath and in fluid communication with the acquisition layer (figure 3) and a wicking layer (46,48) disposed beneath and in fluid communication with the storage layer (figure 3), comprising compressible hardwood pulp (col. 12, lines 16 – 28) and having a density of between about 0.05 and about 0.4 g/cc (col. 15, lines 3 – 6) where the ratio of the vertical wicking height of the wicking layer to the vertical wicking height of the storage layer is equal to or greater than 1.25 as set forth in col. 11, lines 11 – 15.

As to claim 2, Hammons discloses the vertical wicking height to be greater than 3.0 as set forth in col. 11, lines 19 – 22.

With reference to claims 3 – 4, Hammons discloses the use of eucalyptus as set forth in col. 12, lines 16 – 28.

As to claim 5, Hammons discloses the wicking layer further comprising chemically treated softwood fibers as set forth in col. 11, lines 53 – 66.

With reference to claim 6, Hammons discloses the wicking layer being imprinted with a compression pattern as set forth in col. 10, lines 40 – 52.

With respect to claim 10, Hammons discloses an absorbent core wherein the wicking layer has a density of between 0.1 and 0.3 g/cc as set forth in col. 15, lines 3 – 5.

With respect to claim 11, the examiner notes the product by process language and reminds the applicant that:

"[E]ven though product-by-process claims are limited by and defined by the process, determination of patentability is based on the product itself. The patentability of a product does not depend on its method of production. If the product in the product-by-process claim is the same as or obvious from a product of the prior art, the claim is unpatentable even though the prior product was made by a different process." *In re Thorpe*, 777 F.2d 695, 698, 227 USPQ 964, 966 (Fed. Cir. 1985) (citations omitted) (

Additionally, Hammons discloses a unitary absorbent core as set forth in figure 3.

Regarding claim 12, Hammons discloses an absorbent article comprising a liquid permeable top sheet (col. 6, lines 64 – 67), a liquid impermeable back sheet (40) and an absorbent core disposed between the topsheet and the backsheet, comprising an acquisition layer (38), a storage layer (44) having absorbent capacity (col. 9, lines 10 – 18), disposed beneath and in fluid communication with the acquisition layer (figure 3)

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and a wicking layer (46) disposed beneath and in fluid communication with the storage layer (figure 3), comprising compressible hardwood pulp (col. 12, lines 16 – 28) and having a density of between about 0.05 and about 0.4 g/cc (col. 15, lines 3 – 6) where the ratio of the vertical wicking height of the wicking layer to the vertical wicking height of the storage layer is equal to or greater than 1.25 as set forth in col. 11, lines 11 – 15.

As to claim 13, Hammons discloses the claimed articles as set forth in col. 3, lines 49 – 53.

Regarding claim 29, Hammons discloses an absorbent core (42) comprising an acquisition layer (44), a storage layer (48) having absorbent capacity (col. 14, lines 63 – 66), disposed beneath and in fluid communication with the acquisition layer (col. 13, lines 10 – 16) and a wicking layer (46) disposed beneath and in fluid communication with the storage layer (figure 2), comprising compressible hardwood pulp as set forth in col. 12, lines 16 – 28.

Hammons discloses that the storage layer has an absorbent capacity by disclosing that the storage layer (48) is formed from the same materials as the acquisition layer. As disclosed in col. 9, lines 10 – 19, the acquisition layer may be formed from cellulosic fibers, which possesses absorptive properties. Likewise, in col. 7, lines 53 – 57, Hammons discloses that the acquisition layer temporarily stores fluid.

With reference to claim 30, Hammons discloses an absorbent core wherein the wicking layer (46) comprises from about 50% by weight to about 99.9% by weight of hardwood fibers (col. 12, lines 25 – 26) and from about 0.1% by weight to about 50% by

weight synthetic fibers (col. 23, lines 35 – 36), the storage layer (48) including synthetic fibers (col. 14, lines 63 – 66 and col. 9, lines 10 – 13) and having a density of between about 0.05 and about 0.25 g/cc (col. 14, lines 63 – 66 and col. 8, lines 59 – 61) and the acquisition layer (44) includes synthetic fibers (col. 9, lines 10 – 13) and has a density of between 0.04 to 0.1g/cc as set forth in col. 8, lines 59 – 61.

As to claim 35, Hammons discloses an absorbent core (42) comprising an acquisition layer (44), a storage layer (48) having absorbent capacity (col. 14, lines 63 – 66), disposed beneath and in fluid communication with the acquisition layer (figure 2) and a web imprinted wicking layer (46) disposed beneath and in fluid communication with the storage layer (figure 2), comprising compressible wood pulp (col. 12, lines 16 – 28) in which there is a pattern of densified regions and less densified regions as set forth in col. .

In col. 10, lines 40 – 48, Hammons incorporates Werenicz (US 4,842,666) which discloses the adhesive as a fine web of extremely thin filaments (col. 2, lines 50 – 58) thereby providing a web imprinted layer. Further, Hammons discloses that heat and/or pressure bonds may be used (col. 10, lines 48 – 52) which would provide the layer with a pattern of densified regions (wherever pressure and/or heat bonds exist) and less densified regions (areas that have not been heat/pressure bonded).

With reference to claim 36, Hammons discloses an absorbent core wherein the wicking layer (46) comprises from about 50% by weight to about 99.9% by weight of wood fibers (col. 12, lines 25 – 26) and from about 0.1% by weight to about 50% by weight synthetic fibers (col. 23, lines 35 – 36), the storage layer (48) including synthetic



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fibers (col. 14, lines 63 – 66 and col. 9, lines 10 – 13) and having a density of between about 0.05 and about 0.25 g/cc (col. 14, lines 63 – 66 and col. 8, lines 59 – 61) and the acquisition layer (44) includes synthetic fibers (col. 9, lines 10 – 13) and has a density of between 0.04 to 0.1g/cc as set forth in col. 8, lines 59 – 61.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 7 – 9 are rejected under 35 U.S.C. 103(a) as obvious over Hammons et al. (US 5,647,863).

The difference between Hammons and claims 7 – 9 is the provision that the rewet value of the core is numerically defined.

Hammons teaches a core with low rewet characteristics (col. 5, lines 17 – 19) but fails to associate a numerical value with the rewet characteristic.

However, it well known in the art that a low rewet value generally corresponds to a rewet value of less than 1 gram. See, for example, col. 6, lines 23 – 24 of Georger et al. (US 5,919,177) and col. 6, lines 36 – 37 and Table 1 of Aziz (US 4,324,247).

It would have been obvious to one of ordinary skill in the art to consider the low rewet value of Hammons as being comparable to less than 1 gram since it has been established in the prior art that a low rewet value is equivalent to 1 gram or less.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michele Kidwell whose telephone number is 703-305-2941. The examiner can normally be reached on Monday - Friday, 7:30am - 4:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Calvert can be reached on 703-305-1025. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
Michele Kidwell  
April 16, 2004